

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CASEY INVESTIGATORS LLC, a Washington  
Limited Liability Company, and MARIO A.  
TORRES, an individual,

Plaintiffs,

v.

PRONTO PROCESS SERVICE, INC., a  
Washington corporation; NORTHWEST RAIL  
ENTERPRISES, INC., a Washington  
corporation; MARK OWENS, an individual;  
GREGORY and MARY LEE RUSTAND,  
individually and as a married couple; DIANE  
PEFLEY, an individual; A to Z LEGAL  
SUPPORT SERVICES, a Washington business  
entity; ROBERT G. LACK, an individual;  
WASHINGTON STATE PROCESS SERVERS  
ASSOCIATION, a Washington business  
association; and NATIONAL ASSOCIATION  
OF PROFESSIONAL PROCESS SERVERS, a  
national business association,

Defendants.

**The Honorable John C. Coughenour**

**Case No. CV04-1453 C**

**MOTION TO COMPEL DISCOVERY  
RESPONSES OR, IN THE  
ALTERNATIVE, TO DISMISS ALL  
CLAIMS AGAINST WSPSA WITH  
PREJUDICE**

**Noted for: February 25, 2005**

Defendant Washington State Process Servers Association ("WSPSA") requests that the  
Court enter an Order compelling Plaintiffs to fully and completely answer Defendant's First  
Interrogatories and Requests for Production. (A copy of Plaintiff's response are attached as

**WSPSA'S MOTION TO COMPEL OR  
IN THE ALTERNATIVE TO DISMISS**  
Case No. CV04-1453 C  
Seattle:33793.1 048501.1002

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exhibit A to accompanying Zissler Declaration in Support of Motion to Compel). In the alternative, WSPSA moves to dismiss the action.

### I. FACTS

On November 10, 2004, WSPSA served Plaintiffs with First Interrogatories and Requests for Production. See accompanying Zissler Declaration ("Zissler Decl."), ¶ 2. Plaintiffs failed to serve responses within 30 days and did not request an extension. *Id.* On December 29, 2004, undersigned counsel contacted Plaintiff's counsel who assured that answers would be forthcoming "over the next several days." *Id.*, ¶ 3. On January 10, 2005, the undersigned again contacted Plaintiff's counsel. *Id.*, ¶ 4. Answers were finally provided on January 13, 2005. *Id.*, ¶ 5. A FRCP 37 conference was conducted by the parties on January 24, 2005, but was unsuccessful in resolving the dispute. *Id.* ¶ 6.

### II. ARGUMENT AND LEGAL AUTHORITY

#### Interrogatory Nos. 2, 3, 4, 5, 6, and 7 and Corresponding Requests for Production

The above referenced interrogatories and requests for production sought the factual basis, and supporting documents, regarding plaintiffs' assertion that various defendants engaged in a "conspiracy," "fixed prices," "forced plaintiff to join defendants' business association," made "false communications," and "acted on behalf of WSPSA." Plaintiffs' "answer" however, to Interrogatory Nos. 2, 3, 4, 5, 6, 7 consisted of the following:

Objection. This contention Interrogatory is premature under FRCP 33(b). See *B. Braun Medical Inc. v. Abbott Laboratories*, 155 F.R.D. 525 (USDC E.D. Pennsylvania (1994)).

See, Plaintiffs' Responses to WSPSA's Interrogatories and Request for Productions, Exhibit A to Zissler Decl.

Leaving aside that Plaintiffs have waived the right to assert objections by not timely responding, the cited case is inapposite as it states, in sum, that in early stages of discovery some

1 information may not yet be available. Here, the discovery deadline is February 28, 2005.

2 During the Rule 37 conference, Plaintiffs' counsel indicated that discovery was ongoing and that  
 3 he "hoped" that information, if any, would be provided prior to the close of discovery. WSPSA  
 4 finds plaintiffs' response inadequate as the requested information is at the heart of the complaint  
 5 and should have been known prior to filing suit. For example, if someone "forced" plaintiff  
 6 Torres to join defendant's business association, Torres should know who forced him, when, and  
 7 what they said.

8  
 9 By requiring WSPSA to wait until the close of discovery to determine whether Plaintiffs  
 10 have *any* factual support for the allegations underlying the suit, Plaintiffs preclude WSPSA from  
 11 having the necessary time to file a motion to compel at that time should the responses not be  
 12 forthcoming or be inadequate. Consequently, WSPSA is forced to file this motion to protect its  
 13 interests at this time. Certainly, if Plaintiffs have no facts, the case should be dismissed.

14  
 15 **Interrogatory Nos. 9A, 9B, 10A, 10B, 12A, 13, and**  
 16 **Requests for Production 9A, 9b, 10, 11A, 11B, 12B, 13B, 14, 15 and 18**

17 Plaintiffs did not object to the above requests but asserted, in sum, that responsive  
 18 information, if any, would be provided at a later date. Once again, by delaying any substantive  
 19 response until the close of discovery, (assuming such is served), plaintiffs preclude WSPSA from  
 20 having sufficient time to file a motion to compel if such is necessary. Thus, WSPSA is forced to  
 21 file this motion to protect its interests.

22  
 23 **III. CONCLUSION**

24 I personally do not believe that the Court should have to entertain contingent  
 25 motions such as this one. However, given Plaintiffs' failure to properly respond to discovery

1 requests and my obligations to my clients, I do not believe that I have a choice. WSPSA  
2 respectfully requests that Plaintiffs be compelled to provide answers to the above referenced  
3 Interrogatories and Requests for Production. In the alternative, WSPSA moves that all claims  
4 against WSPSA be dismissed on account of Plaintiffs' failure to produce any facts or evidence  
5 responsive to WSPSA's requests.  
6

7  
8 **IV. PROPOSED ORDER**

9 A proposed order is attached.

10 February 10, 2005  
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13   
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